

Piotr Michalik

CHARTER OF MARYLAND AS AN EXAMPLE OF PROPRIETARY COLONIAL CHARTER

Independent of the fact that in the beginning the character of English colonialism, was more of a private trade and colonization enterprise, although colonization efforts were to a greater or lesser degree subject to the control of the Crown. A legal means of that control that at the same time was a tool stimulating the development of trade and settlement were royal charters. They were of strictly feudal character, as they meant transfer of sovereign rights of the monarch to the beneficiary of his or her charter. Depending on the type of person who the charter was issued for, two basic types were distinguished: corporate and proprietary.¹ Both these models were used, while establishing English colonies in America. And although it was a corporate charter that held the historical priority, majority of the 13 colonies were formally associated on the power of proprietary charters.²

In the Middle Ages, municipal, merchant, and craftsmen charters, had the power to shape the social and economic face of England. They ensured participation in the *iura regalia*, reserved for the monarch, to corporations – cities, merchants companies, and guilds, and were practically tantamount to monopoly on the given form of economic activity, limited only to a certain location or specific conditions. What is more, these charters awarded corporations with certain sovereign powers, related to the character of their operation, as for example, the right of the guild to

¹ P. L. Kaye, *The Colonial Executive Prior to the Restoration*, “Johns Hopkins University Studies in Historical and Political Science” 1900, ser. 18, No. 5–6, p. 8.

² *Ibidem*, pp. 3 and 7–8.

punish the workers subjected to its laws.³ In the case of maritime trade, the importance of the charter was the greater, as international trade was inseparably bound to foreign policy that greatly influenced the safety and security of merchants and success of their operation. The specific character of foreign trade, and especially its high costs, enforced financial cooperation of merchants who, on the grounds of personal relations, or the aforementioned fellowships and brotherhoods, joined their capitals into trade corporations, which led to the establishment of the famous trading companies. In the early modern times, the English Crown was too weak, and even more importantly too poor, to conduct independent overseas trade activities. At the same time, the Crown was lively interested in such an activity, mostly for fiscal but also for political and strategic reasons. The only practical, as it turned out later also the best, means to achieve these goals was control and simulation of activity of own merchants through legal formalization of their operation in the charters of incorporation they were issued.⁴

The evolutionary character of the transition from the mediaeval merchant charter to the modern incorporation charter allows only a conventional definition of the latter half of the 16th century as the beginning of the period when the English Crown incorporated first overseas trading companies, whose legal form was akin to that of contemporary corporations.⁵ Established in 1357, the fellowship of merchants of the city of York, namely, The Merchant Adventurers of York, dealt with trade with the Netherlands and Germany, even though it had a trading license from King Edward III, it obtained the status of a legally incorporated company only in 1578, which proves the fact that already at that time such a state as was required to conduct large scale overseas trade.⁶ It is also a fact that from the incorporation of the Muscovy Company in 1555 to the incorporation of the East India Company in 1600, the Crown issued more than 10 charters for overseas trading companies.⁷ Divided on the grounds of legal bases concerning their operation and incorporation, these fall into three categories.

The first and historically oldest was the already described regulated company, based on the model of merchant fellowship. The second category was the company that offered a transitory form between the regulated company a joint-stock company, namely the semi-joint-stock company. Maintaining the legal form of a regulated company, it allowed bringing together the members' capitals to cater for the needs of a specific enterprise, which allowed conducting more extensive and more risky operations. A representative of this type was for, example, the East India Company.⁸ The last

³ *Ibidem*, p. 9.

⁴ Ch. M. Andrews, *The Colonial Period of American History. The Settlements*, New Haven 1936, Vol. 1, pp. 42–44.

⁵ H. C. Hockett, *The Constitutional History of the United States 1776–1826*, New York 1955, pp. 5–7.

⁶ Ch. M. Andrews, *op. cit.*, Vol. 1, p. 29.

⁷ E. P. Cheyney, *European background of American history 1300–1600*, New York 1961, pp. 86–92.

⁸ Which in 1650 changed its constitution to *joint-stock company*.

and most modern category was the joint-stock company operating along principles akin to those governing today's joint-stock companies. It was incorporated by a royal charter that awarded the company with a specific trade monopoly, and also a certain scope of sovereign competence much broader than in the case of regulated companies. The members shareholders of the company not only were not bound to prove their trading competence, but would often not deal with trade as such at all. Hence they were frequently representatives of the aristocracy, the Privy Council, and the court, who ensured the company with the appropriate support from the Crown. Both the trading activity and the sovereign powers of a company were vested in the hands of the governing body, whose means of association, operation, and control were regulated in the royal charter. Among the 16th century companies, this was the form of incorporation of the Muscovy Company and the Levant Company established in 1592.⁹

A joint-stock company was best fit to undertake and conduct major trading enterprises, the more so if they were connected to colonizing activity that required vast financial outlay and firm support if not involvement on behalf of the Crown. This is why this very legal form was employed for the first major trade and colonization attempts undertaken in the latter half of the 16th century.¹⁰ It is to be emphasized that in the period in question, besides the companies that were incorporated by legal charter, both trading, and trading and colonization activity was also undertaken by non-formal fellowships and partnerships that in fact operated on the basis of joint capital but were represented before the Crown by natural or legal persons, being their members, also to avoid the costly procedure of incorporation.¹¹ These groups had their share in the financing of individual colonization and trading missions, as for example the expeditions of Sir Humphrey Gilbert and Sir Walter Raleigh.¹² It was, however, only the project undertaken by a joint-stock company with the full support from the Crown, namely so-called London Company the First Virginia Company, incorporated by King James I on April 10, 1606, that inaugurated the lasting presence of the English in the New World by establishing Jamestown in 1607.¹³

⁹ Ch. M. Andrews, *op. cit.*, Vol. 1, p. 41.

¹⁰ Priority belongs to Muscovite Company, whose charter awarded it the right to take possession of the discovered territories and hold jurisdiction over them, even though the practical operation of that company was of strictly trading nature. A good example of endeavours to carry out colonising activity was the unsuccessful expeditions organised in the years 1577–1578 by the Company of Cathay (China) founded in 1576 under the influence of Martin Frobisher's discoveries on Baffin Island; see: S. Grzybowski, *Polityka kolonialna Tudorów i pierwszych Stuartów*, Wrocław 1970, pp. 63–68 and 106–107.

¹¹ Ch. M. Andrews, *op. cit.*, Vol. 1, pp. 41–42.

¹² See: below, p. 5.

¹³ The Charter of James I produced on that day was issued simultaneously for two companies: the First Company, with shareholders from London, and the Second Company, with shareholders from Bristol, Exeter, and Plymouth (hence known as the Plymouth Company). The Charter allowed the London Company the sole right of settlement on the shores of North America lying from 34 degrees north to 38 degrees north, and joint settlement of the land from 38 degrees north to 41 degrees north together with the Second Company (Plymouth) on the condition that the settlements of the two companies are at least 100 miles apart. *The First Charter of Vir-*

The historical roots of the proprietary charter date back to the days of William the Conqueror. Following the system of marches, that is border counties, introduced by Charles the Great (Charlemagne) to protect the borders of the state from external threats, William developed such territories in England, awarding them with the status of County Palatinates.¹⁴ The most important of those were the County of Chester, protecting the Welsh border, and the County of Durham, protecting the Scottish border.¹⁵ Due to its strategic importance, palatinates were the most independent of all the fiefdoms of the Crown, as the sovereignty of the Count Palatine, modeled on royal, was to guarantee efficient discharge of the defensive function. Following the royal appointment, whose beneficiary in the case of the County of Chester was a lay lord (usually an earl) and in the case of Durham – its prince bishop, palatinate was a fully sovereign *quasi regnum* formerly bound to England only with the oath of loyalty that its proprietor swore to the king. Not a king himself, the palatine had at his disposal full royal power (*iura regalia*). He laid down the law, had his own parliament and developed the judiciary system and administration, with the right to establish offices that were part of the *curia regis*. He said the right to deal capital punishment and pardon all and any crimes, including high treason. He collected taxes, waged and conducted wars, owned a mint, and chartered corporations. At the same time, in his sovereign power, he had the right to establish and practice subinfeudation within the palatinate, and collect his feudal dues from them. Moreover, he also benefited from the natural riches and own domain¹⁶.

The already mentioned fact that the Count Palatine, remaining a vassal of the King of England, had no obligations towards him other than the oath of fealty, requires special emphasis. A distinctive expression of that was not appointing representatives of County Palatinates to the House of Commons, although the Count Palatine himself had the right to sit in the House of Lords. On the other hand, although Chester and Durham were excluded from the direct royal jurisdiction, be it judiciary or fiscal, they did remain a part of the *Regnum Angliae*, and owed their special status to the royal charter. This charter was limited by Edward the first by issuing in 1290 the Statute of *Quia Emptores*, which practically devoid also the palatines from the power of subinfeudation. A major limitation of the power of the

ginia; April 10, 1606, [in:] *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, ed. F. Newton Thorpe, Washington DC 1909 (further: Thorpe).

¹⁴ P. L. Kaye, *op. cit.*, p. 9.

¹⁵ These two together with the Lancaster Palatinate established in the 14th century have formally retained their status to this day. Still, they were not the only palatinates. During the reign of King William the Conqueror, also the County of Kent was elevated to this rank, to break the resistance of its inhabitants against the Norman invasion. See: D. R. Bates, *The Character and Career of Odo, Bishop of Bayeux (1049/50–1097)*, "Speculum" 1975, Vol. 50, No. 1, pp. 1–20.

¹⁶ H. L. Osgood, *The Proprietary Province as a Form of Colonial Government*, "The American Historical Review" 1897, Vol. 2, No. 4, pp. 644–645.

uncrowned kings¹⁷ came in turn during the reign of Henry VIII, who, strengthening the central power deprived both the palatinates of court (and Chester also of parliamentary) immunity, which led to the gradual formal and legal unification with other lands of the monarchy, which was finally effected at the time of Restoration.¹⁸

It does not require arguing that constructed so, a model of managing a province (being a political anachronism in England) could find application in the English colonizing effort. Its basic advantages included combining the interest of the Crown with the interests of potential investors: future lords palatines. The latter, with the view to such a broad scope of competence and immunity, were quite eager to involve their greater or lesser fortunes in highly risky colonizing enterprises. The Crown, on the other hand, especially having had its hopes dashed by the Virginia company, counted on the success of settlement conducted under the powerful and determined command that was to be guaranteed by the royal power of the Lord Palatine. Not without significance were also the personal and courtly connections between the monarch and his future overseas vassals. Therefore it should come as no surprise that it was the palatinate that became the model solution for colonial charters of the proprietary type issued by the Stuarts.¹⁹

During the Tudors the form of county of palatinate was not used directly in the proprietary individual English colonization enterprise, yet the form of fealty was adopted for all the legalization of the charters. Already in the letters patent issued by King Henry VII in 1496 for a Venetian of the name John Cabot, the King stated that “the aforesayd Iohn and his sonnes, or their heires and assignee may subdue, occupy and possesse all such townes, cities, castles and isles of them found [...] as our vassals, and lieutenants”.²⁰ Similarly, the charter received by Humphrey Gilbert in 1578 to colonize Newfoundland was not only the first document to put more profound stress on the questions of settlement than on those related to trade, but it also determined that all the territories assumed by Gilbert “shall for ever bee holden by the said Sir Humfrey, his heires and assignee of us, our heires and successors by homage”.²¹ Similarly, Walter Raleigh’s charter of 1584, which allowed the establishment of the first English settlement in America on Roanoke Island, uses precisely the same expression as the 1578 charter.²² Each of the grants mentioned above, entitled the beneficiary to hereditary feudal ownership of the discovered and captured territories together with “the right, royalties, franchises, and iurisdictions” of land

¹⁷ This is how Anthony Bek, Bishop of Durham (1284–1311) defined his political position in the Kingdom of England: “There are two kings in England, namely the Lord King of England, wearing a crown in sign of his regality and the Lord Bishop of Durham wearing a mitre in place of a crown, in sign of his regality in the diocese of Durham.” Quoted after: *The North East England History Pages*, www.northeastengland.talktalk.net.

¹⁸ H. L. Osgood, *op. cit.*, pp. 645–46. Durham finally lost its parliamentary immunity in 1675.

¹⁹ Re. the entire paragraph, see below for more.

²⁰ *The Letters Patents of King Henry the Seventh Granted unto Iohn Cabot and his Three Sonnes, Lewis, Sebastian and Sancius for the the Discouerie of New and Unknown Lands*, [in:] Thorpe.

²¹ *Letters Patents to Sir Humfrey Gylberte June 11, 1578*, *ibidem*.

²² *Charter to Sir Walter Raleigh: 1584*, *ibidem*.

and sea.²³ There were, however, significant differences between Cabot's charter and those issued to Gilbert and Raleigh. First of all, in the first the Crown reserved for itself the right to a fifth of all revenues received from the enterprise, which was a great burden levied on the beneficiary of the charter.²⁴ In the latter case, the document mentions only a fifth part "of all the oare of golde and siluer, that from time to time [...] shal be there gotten and obtained".²⁵ This last provision would now appear in all the successive proprietor charters, as the only real although hypothetical burden laid on the beneficiary of the appointment.²⁶ The charters of 1578 and 1584, far more extensive than the one of 1496, developed further the questions related to the territorial sovereignty of the charter's beneficiary, including his position of the feudal proprietor of the conquered territories, and wielding the "full power to dispose thereof, and of euery part in fee-simple or otherwise, according to the order of the lawes of England".²⁷ These and other differences prove that the search for a formal model for regulation of the activity focused more on settlement than trade brought the royal charters closer to the form used for the palatinate county. As far as the first English individual trade and colonial charters, as e.g. Cabot's, were modeled on their Portuguese and Spanish counterparts²⁸, during the reign of Elizabeth Tudor and the first Stuarts, the Crown assumed a model of the proprietary charter based on own and local feudal construction that was to provide an efficient regulatory measure that at the same time promoted colonial activity in America.

In 1622 the massacre of colonists in Jamestown sealed the fate of the Virginia Company. The Royal commission summoned to explain the internal situation within the corporation discovered numerous irregularities. That led to the Company's dissolution by King James I in 1624. Even though the Virginia Company was the first to maintain the continuity of English settlement in America, its operation brought numerous losses and was decidedly negatively appraised by the Crown.²⁹ This, naturally, did not lead to the withdrawal of the royal support for colonial endeavors of corporations.³⁰ Nevertheless, even before the liquidation of the Vir-

²³ *Ibidem*.

²⁴ *The Letters Patents of King Henry...*, *ibidem*.

²⁵ *Charter to Sir Walter Raleigh...*, *ibidem*.

²⁶ In the case of Elizabethan charters, when the idea of discovering gold or silver in the New World was treated very seriously, such a provision was a fairly realistic burden. After the successive failures to find precious metals (especially in Virginia), it must have been treated more formally.

²⁷ *Charter to Sir Walter Raleigh...*, *ibidem*.

²⁸ See: S. Grzybowski, *op. cit.*, pp. 35–37.

²⁹ *Ibidem*, pp. 231–232; M. J. Rozbicki, *Narodziny narodu. Historia Stanów Zjednoczonych do 1861 r.*, Warszawa 1991, pp. 63–64. Primarily due to the fact that during the 17 years of its existence, approx. 4800 settlers died either in Virginia or on their way to the colony, with the four worst years claiming 3500 lives.

³⁰ In 1620, the Second Virginia Company of Plymouth transformed into the Council for New England on the power of King James' charter: "Councill established at Plymouth, in the County of Devon for the planting, ruling, ordering, and governing of New-England, in America" – *The Charter of New England: 1620*, [in:] Thorpe. Thanks to its corporate endowments, the following were founded: Plymouth (in 1620) and Massachusetts (in 1630), the sounders of the latter received another charter directly from King Charles I in 1629: *The Charter of Massachusetts Bay: 1629*, [in:] Thorpe. Also Georgia was established by a direct

ginia Company, the royal initiative turned rather towards the individual investors, who were furnished by King James with proprietary charters. Beginning with the year 1621, when the Scottish noble, William Alexander, Earl of Stirling, received an appointment for the Province of Nova Scotia,³¹ the Stuarts created successive 'overseas palatinates' of which the most important were Maryland; Maine granted in 1639 to Sir Ferdinand Gorges;³² New York, granted to James, Duke of York in 1664;³³ Carolina bestowed to Sir Robert Heath in 1629,³⁴ and after declaring this charter null and void, to eight other proprietors in 1663³⁵; and Pennsylvania granted to William Penn in 1681.³⁶ Similarly, the beneficiaries of the royal charters, both individual and corporate ones, transferred some of their territories (together with the proprietary rights) to establish new colonies, as was the case with the New Hampshire granted to Captain John Mason by the Council for New England in 1622 and 1629;³⁷ New Jersey, awarded by the Duke of York to Sir George Carteret, and John Lord Berkeley, in 1664;³⁸ and Delaware established by William Penn in 1701 from the territories that were given to him in 1682 by the king's brother³⁹. Only a few of the proprietary charters were *expresis verbis* based on the model of palatinate county, and specifically on that of the Durham bishopric. Among those mentioned above, only those issued for Maryland, Maine, and Carolina were of the Durham type. And it is the first of these that may be considered a model charter of the proprietary type.

On June 20, 1632, the *Charter of Maryland* signed by King Charles the first was accompanied by the Great Seal of the Realm.⁴⁰ The recipient of the monarch's

corporate endowment in 1732: *Charter of Georgia: 1732*, [in:] Thorpe, which in the case of Connecticut, New Haven, and Rhode Island was only indirect: G. B. Tindall, D. E. Shi, *Historia Stanów Zjednoczonych*, Poznań 2002, pp. 76–77.

³¹ The text of the charter is available in: J. G. Bourinot, *Builders of Nova Scotia*, Toronto 1900, pp. 104–121.

³² It was a Durham type charter. *Grant of the Province of Maine: 1639*, [in:] Thorpe. Already in 1622, Gorges together with John Mason received from the Council for New England the territories of future Maine and New Hampshire: *A Grant of the Province of Maine to Sir Ferdinando Gorges and John Mason, esq., 10th of August, 1622*, *ibidem*.

³³ *Grant of the Province of Maine: 1664*, *ibidem*. In this charter, King Charles II endowed his brother with the territories lying between the rivers Connecticut and Delaware, where the Dutch New Netherlands still existed at that time. Later in the year, the Dutch colony was conquered by James and renamed to New York: M. J. Rozbicki, *op. cit.*, p. 145.

³⁴ It was a charter of the Durham type: *Sir Robert Heath's Patent 5 Charles 1st; October, 30 1629*, [in:] Thorpe.

³⁵ They were: Henry Hyde, 2nd Earl of Clarendon, George Monck, 1st Duke of Albemarle, William Craven, 1st Earl Craven, John Berkeley, 1st Baron Berkeley of Stratton, Anthony Ashley Cooper, 1st Earl of Shaftesbury, Sir George Carteret, Sir William Berkeley, and Sir John Colleton. This was another of the Durham type charters: *Charter of Carolina, March 24, 1663*, [in:] Thorpe.

³⁶ *Charter for the Province of Pennsylvania, 1681*, *ibidem*.

³⁷ *Grant of Hampshire to Capt. John Mason, 7th of November, 1629*, *ibidem*. See also footnote No. 32.

³⁸ *The Duke of York's Release to John Lord Berkeley, and Sir George Carteret, 24th of June, 1664*, [in:] Thorpe.

³⁹ *Charter of Delaware – 1701*, *ibidem*.

⁴⁰ *The Charter of Maryland June 20, 1632, Introduction*, by E. C. Papenfuse, [in:] *Archives of Mary-*

will was the “right Trusty and Wellbeloved Subject *Cecilius Caluert Baron of Baltimore* in our Kingdom of *Ireland*, Sonne and heire of Sir *George Caluert*” who, following an intention of his father decided “to tranfport an ample Colony of the *English Nation* unto a certaine Countrey [...], in the parts of *America*”.⁴¹ Both the very concept of establishing Maryland and acquisition of the proprietary charter from the Crown were not the work of its first proprietor and beneficiary of the charter, Cecil (in fact Cecilius) Calvert, but his father, George Calvert, 1st Baron Baltimore, who devoted considerable part of the five decades of his life to colonial plans.

George Calvert was born around 1580 in Kipling, Yorkshire. His father was Leonard Calvert, a gentleman of Flemish origin, and mother – Alice (Grace) Calvert née Crosland. George began his walk of life, appropriate for a provincial gentry, by entering Trinity College at Oxford University. It was also in Oxford that having completed his studies, he received the degree of Bachelor of Arts in 1597, and an honorary degree of Master of Arts in 1605. At that time he married his first wife, Anne Mynne of Hertfordshire. The fruit of that union were 11 children.⁴² In 1606 Calvert became one of private secretaries to the Earl of Salisbury. His tasks, initially those of a translator, and later also of the advisor, included primarily dealing with Spanish and Italian correspondence. Simultaneously, beginning with 1608, he held the post of the Clerk of the Crown of Assize and Peace in Ireland. Besides that, Calvert was elected to the House of Commons, where in the years 1609–1611 he represented the town of Bossiney in Cornwall.⁴³ It is highly probable that it was then that, making use of his double role and playing that of the intermediary, Calvert came close to James I. Thus, without giving up the entirely his activity in the House of Commons,⁴⁴ Sir George focused on the career of a courtier and a clerk. In 1613, he acquired a very important post of the Clerk of the Privy Council, and four years later became knighted by King James.⁴⁵

In 1619, Sir George was nominated one of the two Secretaries of State, and it was him, and not Robert Naunton, who was allowed to use the prestigious title of ‘the Principall Secretary’. This post gave him a vote in the Privy Council, and guaranteed regular contact with the king and influence on entire internal and for-

land Online, <http://aomol.net/html/index.html> (further: AMO), Vol. 549, pp. 5–7. The Latin original of the Charter, that must have been in the possession of the Calvert family, has been lost to us. London’s Public Record Office holds the original of the patent roll (Patent Roll 8 Charles I, Part 3, No. 2594. PRO). Its scan is available from AMO, Vol. 3, pp. 3–12. Currently the oldest known English copy of the charter is the manuscript found in the documents of Sir Edmund Andros, Governor of Maryland in the years 1693–1694 (the so-called Houghton manuscript). It consists of two parts written at different times, of which at least one dates back to the first two years of the colony. Currently, the document is stored in the Maryland Hall of Records. The text of the Houghton manuscript is identical to the oldest known printed English copy of the charter coming from a pamphlet entitled *A Relation of Maryland, 1635* and promoting Maryland. Its scan may also be accessed from AMO, Vol. 657, p. 61–83, which is where the quotes used in this paper come from.

⁴¹ *The Charter of Maryland*, [in:] AMO, Vol. 657, p. 61.

⁴² *The Encyclopaedia Americana International Edition*, Danbury–Connecticut 1993, Vol. 3, p. 127.

⁴³ *The Concise Dictionary of National Biography*, Oxford 1992, Vol. 1, p. 443.

⁴⁴ He will return there in the years 1621–1624, this time for Yorkshire.

⁴⁵ *The Columbia Electronic Encyclopaedia*, Sixth Edition, Columbia University Press 2003.

eign policy.⁴⁶ The king's grace had also a material dimension, as the new secretary soon received a land endowment in Longford in Ireland, an annual pension of £ 1000, and a share in royal tax on the silk trade, which allowed him to purchase (in 1619) his home town of Kipling and build there the Kipling Hall: a residence of the Calvert family proper for his status.⁴⁷

Almost at the same time as his career of a clerk began, Calvert took to his second life's passion, namely, trade and colonization. Already in 1609 he became a shareholder of the Virginia Company (of London) and the East India Company, and in 1622 also a member of the Council for New England.⁴⁸ Being the Secretary to the Earl of Salisbury who at that time managed English colonial policy, and later participating personally in its development, Calvert had the opportunity to acquire the experience necessary to conduct his overseas enterprise. Besides all these, he was still involved in Irish matters, which the English considered a particular 'training ground' for their colonization policy.⁴⁹ His tenure of an important position at the court and acquisition of necessary funds, made it possible for Calvert to go forth with his colonization plans.

In 1620, Sir George purchased from a William Vaughan fragment of the coast of Newfoundland. A year later, he sent there a 12-man-strong group of settlers under Captain Edward Wynne. The go behind this expedition was to establish the Ferryland Colony that would become the trans-shipment and trading base for the flourishing Newfoundland fisheries. Initially, everything was developing favorably, which Wynne reported to Calvert not without an undisguised joy.⁵⁰ Therefore, Sir George officially appealed to the king to be granted the south-eastern part of Newfoundland.⁵¹ King James granted him his wish, and on April 4, 1623, Calvert received the proprietary charter for the Province of Avalon, encompassing the territory of today's Avalon Peninsula.⁵² The choice of such a name, of highly symbolic character, points at the religious intentions of the founder.⁵³ Of greater importance, however, is the content of the charter listing in detail the immense prerogatives of the proprietor of the new colony. In line with the provisions of the charter, Calvert

⁴⁶ G. E. Aylmer, *The King's Servants. The Civil Service of Charles I 1625–1642*, New York 1961, p. 16.

⁴⁷ J. D. Krugler, *English and Catholic. The Lords Baltimore in the Seventeenth Century*, Baltimore & London 2004, p. 39.

⁴⁸ *Ibidem*, pp. 33–34, S. Grzybowski, *op. cit.*, p. 237.

⁴⁹ N. P. Canny, *The Ideology of English Colonization: From Ireland to America*, "The William and Mary Quarterly" 1973, 3rd Ser., Vol. 30, No. 4, pp. 575–598.

⁵⁰ *Edward Wynne Letter to George Calvert, 28 July 1622*, [in:] *Newfoundland Discovered, English Attempts at Colonization, 1610–1630*, London 1982, pp. 195–198.

⁵¹ *Permanent Settlement at Avalon*, [in:] *Colony of Avalon Foundation. The Partnered Project of the Newfoundland and Labrador Heritage Web Site, Memorial University of Newfoundland*, www.heritage.nf.ca/avalon/history/settlement.html. Today, the town of Calvert is situated in the area.

⁵² *Charter of Avalon*, [in:] J. T. Sharf, *History of Maryland*, Baltimore 1879, pp. 34–40.

⁵³ Avalon was the legendary name of Glastonbury, England's earliest centre of Christian worship, according to the legend of King Arthur, founded by Joseph of Arimathea: H. Kirke, *The First English Conquest of Canada*, London 1908, p. 150.

and his successors as “true and absolute Lords and Proprietaries” of the Province of Avalon could “have, exercise, use and enjoy the same [rights], as any Bishop of Durham, within the Bishopprick, or County *Palatine* of Durham, in our Kingdome of England, hath at any time heretofore had, held, used, or enjoyed, or of right ought, or might have had, held, used, or enjoyed”.⁵⁴ In this way, the Charter of Avalon, being the first of the Durham type charters, became directly the model for all the later chapters of the type, and primarily for the Charter of Maryland, which repeated nearly all the provisions of the preceding document.⁵⁵

Calvert owed the acquisition of his overseas palatinate to the favors of King James I, who in this way appreciated the faithful and long-term services of his secretary. On the other hand, Sir George had to cover the costs of the entire enterprise, investing in Avalon, anything between £ 20 000 and 25 000. The value of this investment is a testimony to the strong involvement of Calvert and to the volume of expected revenues, which were to originate primarily from managing Newfoundland fisheries.⁵⁶ Yet the establishment of Avalon was not only a trading and financial investment, but was also the result of the religious and political persuasions of Sir George who hailed from a Catholic family. Although at the age of 12, he officially joined the Church of England, it was a move fostering his future career rather than result of religious beliefs.⁵⁷ After the outbreak of the Thirty Years’ War, Calvert as the Secretary of State became involved in the English–Spanish alliance intended by James I, which could lead to a great improvement in the situation of the persecuted English Catholics, the so-called Recusants.⁵⁸ During the negotiations conducted in the years of 1621–1624, that were to lead to the marriage of Charles, the Prince of Wales to Infanta Maria, Calvert as a specialist in Spanish affairs, prepared, among other documents, legal acts to guarantee the recusants the concessions promised by London to the Spanish Crown.⁵⁹

Should we trust the testimony of a Polish magnate, Jerzy Ossoliński, Sir George was already a Catholic⁶⁰ while still conducting ‘the Spanish match’, even though in 1624 as a Member of Parliament, he swore the oath of supremacy.⁶¹ Thus

⁵⁴ *Charter of Avalon...*, p. 35.

⁵⁵ For this reason I am not analysing its provisions here.

⁵⁶ *Sir George Calvert and the Colony of Avalon*, [in:] *Colony of Avalon Foundation...*; M. J. Rozbicki, *Transformation of the English Cultural Ethos in Colonial America: Maryland 1634–1720*, Warszawa 1985, p. 22.

⁵⁷ J. D. Krugler, *op. cit.*, pp. 29–30.

⁵⁸ For a more comprehensive analysis, see: R. Gardiner, *Prince Charles and the Spanish Marriage: 1617–1623. A Chapter of English History*, London 1869.

⁵⁹ The Spanish demanded that a catholic bishop of Madrid demanded also twenty priests an own public chapel, and excluded from the English jurisdiction, are present by the future Queen. Besides, the children of Charles and Mary were to be brought up by the Queen, in accordance with her religion to the 12th year of age. Moreover, immediate suspension of criminal laws against the recusants, and their abrogation by the Parliament within three years. G. Davies, *The Early Stuarts 1603–1660*, Oxford 1959, pp. 56–58. For further reading see footnote No. 102.

⁶⁰ J. Ossoliński, *Pamiętniki*, Wrocław 1952, pp. 131–132. Calvert ensured Ossoliński about this during the Polish magnate’s stay in London in 1621.

⁶¹ J. D. Krugler, *op. cit.*, p. 64.

both for political and religious reasons, he counted on the success of the Spanish marriage, which could open before him a path to further career and also an opportunity to combine the future career with official conversion to Catholicism. The fiasco of the Spanish alliance, which – despite the expedition of Charles Stewart, the Prince of Wales, and George Villiers, 1st Duke of Buckingham to Madrid in the years 1622–1623 – was broken down by Habsburg unity,⁶² was also a personal defeat for the Secretary of State. In 1624, Calvert was removed by Buckingham both from the matters of war with Spain demanded by the Commons, and from participation in marriage negotiations with France.⁶³ Faced with these, in January 1625, Sir George officially announced his conversion to Catholicism, and soon, without waiting for the oath of supremacy being applied to him, resigned from the office of the Secretary of State. His resignation, however, did not mean falling from the royal grace. In February, James made Calvert, a Peer of the Kingdom of Ireland, creating him the Baron of Baltimore, and let him retain his membership in the Privy Council.⁶⁴ Newly created 1st Baron Baltimore, would however break away from politics by a long way, and devoted himself to his colonial enterprise.

It is hard to say whether these were the hidden religious beliefs of Calvert that influenced his decision to establish the Avalon colony, which from its earliest days was designed to become a refuge for English Catholics should ‘the Spanish match’⁶⁵ be lost. Such a treatment of the colony by Baron Baltimore is far more probable after the year 1625. Moreover, it is a fact that the very extensive rights of the beneficiary of the Avalon Charter allowed him a fair degree of freedom in practicing the religion he confessed, and taking the persecuted Catholics into his protection. Some of them reached Avalon after Calvert’s conversion, and Baron Baltimore himself – as testified by the Anglican pastor in Ferryland, Erasmus Stourton – brought to the colony two priests who started the first Catholic mission in the British North America.⁶⁶ In the same year, Baron Baltimore, brought his entire family, together with his second wife, Lady Joan Calvert, to Avalon, with the intention to make Newfoundland his permanent residence.⁶⁷ These were the religious practices of the Calverts and their coreligionists that brought about the conflict with Stourton who, having been removed from the colony, went to Plymouth, where he made a highly detailed report denouncing Baltimore.⁶⁸

⁶² G. Davies, *op. cit.*, p. 59.

⁶³ J. D. Krugler, *op. cit.*, p. 63. Commenced after the talks with Spain had been broken, the latter negotiations brought about the marriage of Charles I with the Catholic Henrietta Maria in 1625. J. Z. Kędzierski, *Dzieje Anglii 1485–1830*, Wrocław 1986, pp. 155–156.

⁶⁴ *The Concise Dictionary...*, p. 443; J. D. Krugler, *op. cit.*, p. 73.

⁶⁵ This assumption is justified by Stanisław Grzybowski, see: S. Grzybowski, *op. cit.*, pp. 236–238. Similarly, the name of the colony points at the same in a symbolic manner.

⁶⁶ *Sir George Calvert and the Colony of Avalon...*; *Erasmus Stourton Examination before the Justices of the Peace at Plymouth, 9 October 1628*, [in:] *Newfoundland Discovered...*, pp. 284–285.

⁶⁷ *Permanent Settlement at Avalon...*

⁶⁸ *Erasmus Stourton Examination...*

Independent of the religious questions, of key importance for the development of the young colony were its profitability, security, and natural conditions. Unfortunately, all these were not favorable for the colony's proprietor. Having incurred major expenditure,⁶⁹ failed to acquire the expected gains,⁷⁰ and repulsed the assault of French corsairs on the colony in 1628,⁷¹ Baltimore admitted defeat to the severe climate of the Canadian shores⁷². In autumn 1629, he decided to move out from Avalon, leaving there only a group of fishermen and his agent.⁷³ This did not mean, however, that he would resign from his colonial plans. Together with his family and servants, Baron Baltimore moved south to Virginia. He counted on King Charles being equally magnanimous as King James, and grant him a new estate within his "Majesty's dominion of Virginia, where if your Majesty will please to grant me a precinct of land with such privileges as the King your father my gracious master was pleased to grant".⁷⁴ Yet it was also by the Chesapeake Bay that Sir George faced obstacles. Immediately on his arrival at Jamestown in October 1629, he ended a dispute on the oath of supremacy with the authorities of the colony. The report on that conflict submitted by the Governor of Virginia, John Pott, to the Privy Council suggests that, eager to remain in Virginia, Calvert sought a compromise, which however could not be reached.⁷⁵ With matters taking such a turn, Baron Baltimore refuse to swear the oath, and – forced to leave Virginia – returned to England.⁷⁶

The successive defeat did not manage to break Calvert down. Being convinced that the climate of the Chesapeake Bay favors the settlement far better than the aura of the Newfoundland, he became strongly involved in the conclusion of his endeavor to settle in Virginia. However, with a view to previous conflicts on the grounds of religion, Baltimore turned to King Charles for a grant of the land lying south of the James River, as by that time they had not been settled.⁷⁷ The king, however, was unable to grant the wish of his Peer as the land Calvert appealed for had earlier been granted to Sir Robert Heath,⁷⁸ and also due to the stalwart opposi-

⁶⁹ See above, p. 10.

⁷⁰ Which was caused by a slump in Newfoundland fishing: *Sir George Calvert and the Colony of Avalon...*

⁷¹ *George Baltimore to the King, 19 August 1629*, AMO, Vol. 3, p. 16.

⁷² Who thus described it in a letter to Charles I: "I mett with greater difficultyes and encumbrances here which in this place are no longer to be resisted, but enforce me presently to quitt my residence, and to shift to some other warmer climate of this new world, where the wynters be shorter and lesse rigorous. [...] your Majesty may please to understand that [...] from the middst of October to the middst of May there is a sadd face of wynter upon all this land, both sea and land so frozen for the greatest part of the tyme as they are not penetrable no plant or vegetable thing appearing out of the earth untill it bee about the beginning of May, nor fish in the sea besides the ayre so intolerable cold as it is hardly to be endured." *George Baltimore to the King, 19 August 1629...*

⁷³ *Sir David Kirke and the Newfoundland Plantation*, [w:] *Colony of Avalon Foundation...*

⁷⁴ *George Baltimore to the King, 19 August 1629...*

⁷⁵ *Governor Pott and others to the Council, 30 November 1629*, AMO, Vol. 3, p. 16.

⁷⁶ J. D. Krugler, *op. cit.*, pp. 105–106.

⁷⁷ L. G. Carr, E. C. Papenfuss, *A Declaration of The Lord Baltimore's Plantation in Maryland. The Charter of Maryland*, AMO, Vol. 550, p. 12.

⁷⁸ *Ibidem*, p. 7.

tion from the authorities of Virginia. Stronger averse to Baltimore, the government of Virginia fought a fierce battle from 1629 to 1633 not to allow the Calverts on the shores of the Chesapeake Bay, and presented the King and the privy Council with any imaginable arguments against papists.⁷⁹ Nevertheless, in the spring of 1632, Charles agreed to grant Baron Baltimore the land situated south of the Potomac river. Fulfilling the wish of Baltimore, the new colony was named 'the land of Mary' (Mary land) to honor the catholic wife of the King.⁸⁰ Properly assessing the colonization competence of Calvert, the Stuart king supported his endeavors, primarily for the benefit of his own overseas estates, as the future Baltimore's colony was to reinforce and expand the English influence over the American shores, being pitted against the Dutch New Netherland established south of the Delaware River by the Dutch West India Company in 1624.⁸¹ Moreover, the memory of the faithful service of Calvert at the court of James I and the effort he undertook to carry out the decisions of the Charter of Avalon must have been not without significance for this decision.

The 1st Baron Baltimore died in London on April 15, 1632, leaving the fulfillment of his dream to his successor and eldest son, Cecil, 2nd Baron Baltimore and the First Proprietor of the Maryland Colony.⁸² Following the provisions of the Charter of Maryland, Cecil Calvert received from Charles I a vast area of around 6 million acres of land, situated north of the Potomac River, and south-west of the Delaware River, covering the Delaware Peninsula and reaching approximately 250 km deep into the American continent.⁸³ As has been said, Sir Cecil received this territory on the rights of the Prince Bishop of Durham, "in free and common foccage, by fealty onely, for all feruices".⁸⁴ Tenure in free and common socage was for the tenant the most advantageous form of tenure of all the forms of land endowments practiced at the time in England. It meant that the tenant's duties towards his feudal overlord were limited solely to an annual rental, which could be of symbolic nature.⁸⁵ In the Charter of Maryland, this rental was defined as the duty to deliver two Native American arrows to Windsor Castle, on the first Tuesday after Easter, every year, and the right of the Crown to a fifth of the gold and silver mined, naturally, only in the case it has been found.⁸⁶ The charter itself emphasizes that the Calverts were not receiving their new province in any other feudal form, that is *in capite*

⁷⁹ *Documents relating to the Settlement of Maryland, 1629–1637*, AMO, Vol. 3, pp. 16–22.

⁸⁰ See footnote No. 63.

⁸¹ E. C. Papenfuse, *op. cit.*, p. 4.

⁸² *Will of sir George Calvert Baron Baltimore dated 14. Ap: 1632*, [in:] *The Calvert Papers. Maryland Historical Society Fund Publication*, No. 28, Baltimore 1899, Vol. 1, p. 48.

⁸³ M. J. Rozbicki, *Wirginia, Maryland i Karolina*, [in:] *Historia Stanów Zjednoczonych Ameryki*, t. 1: 1607–1763, Warszawa 1995, p. 67. I.e. equivalent to ca. 2 400 000 hectares.

⁸⁴ See above, pp. 10, 65–66.

⁸⁵ Ch. M. Andrews, *Our Earliest Colonial Settlements. Their diversities of origin and later characteristics*, New York, 1961, p. 147; for a more comprehensive analysis, see: J. Lawler, G. G. Lawler, *A Short Historical Introduction to the Law of Real Property*, Beard Books 2000, pp. 13–15.

⁸⁶ E. C. Papenfuse, *op. cit.*, p. 66.

and *by knight's service*⁸⁷ that they would find less beneficial, definitely because both these forms were used in the Charter of Avalon, and the King Charles' Charter granted Sir Robert Heath.⁸⁸

Awarding Baltimore's colony the form of bishopric–palatinate emphasized the legal and feudal character of the entire undertaking. In line with the provisions of the Charter, Baron Baltimore, being the proprietor of entire Maryland, became the sole proprietor of the natural riches of his province, to the like of the monarchs' regale.⁸⁹ Besides this, within his estate, the Proprietary Governor had the right "to erect and incorporate" towns and villages, in which he could settle the colonists that he has brought from overseas.⁹⁰ To achieve this, the right of royal subjects to emigrate to Maryland together with the permit to have them shipped to America were clearly stated in the Charter.⁹¹ Moreover, King Charles granted English citizenship on a one-off, conclusive basis to all residents of Maryland and their descendants, with all the resultant "Liberties, Franchises, and Privileges",⁹² which was definitely very favorable for future settlers and for the development of the province itself.

Of special importance, however, was a privilege that was peculiar to Maryland and allowed Calvert to develop within his colony a feudal manorial system that was fully subjected to him.⁹³ Excluding the Calverts from the under the power of the Statute of *Quia Emptores* and other legal acts related thereto, King Charles awarded the proprietors of Maryland with "full and absolute licence, power, and authoritie [...] to erect any parcells of land within the Province aforefaid, into Mannors, and in every of the faid Mannors, to have, and to hold a *Court Baron*, with all things whatsoever which to a *Court Baron* doe belong".⁹⁴ This immunity resulted in direct dependence of the beneficiary of the grant from Proprietor and not, as was the case in England, from the monarch⁹⁵. This above was attested by the wording of the Charter that claimed that "Lord *Baltemore*, his heires and affignes" may award landed property to anyone who is "willing to take or purchase [...] in fee fimple, or fee taile, or for terme of life, or lives, or yeeres [...] by such feruices, cuftomes,

⁸⁷ *Ibidem*.

⁸⁸ *Charter of Avalon*..., p. 35; *Sir Robert Heath's Patent 5 Charles 1st; October, 30 1629*... The Charter of Avalon envisaged a grey horse as a payment in kind, and the Charter of Carolina "one Circle of Gold formed in the fashion of a crowne", yet only in the case of the King's arrival at the colony. Of far greater importance, however, was the obligation of military service, contained in both the charters, and resulting from the "tenure by knight's service", which was excluded from the Charter of Maryland. For more information, see: J. Lawler, G. G. Lawler, *op. cit.*, pp. 4–11.

⁸⁹ *The Charter of Maryland*..., p. 64.

⁹⁰ *Ibidem*, p. 75.

⁹¹ *Ibidem*, p. 70.

⁹² *Ibidem*, p. 71.

⁹³ This privilege was not included in the Charter of Avalon, nor was it a part of Heath's Charter. Much like the Charter of Maryland, the two entitled the proprietors, only to grant awards, titles and honours, on condition that they will be "not such as are now used in England" – *Charter of Avalon*..., p. 38; *Sir Robert Heath's Patent 5 Charles 1st; October, 30 1629*...; *The Charter of Maryland*..., p. 75.

⁹⁴ *Ibidem*, p. 79–80.

⁹⁵ *Ibidem*, p. 5.

and rents, as fhall feeme fit to the faid now Lord *Baltemore*, his heires and affignes; and not immediately of Vs”.⁹⁶

Certainly, the above-mentioned privilege was based on a concept of organizing the colony’s social and economic structure that would be based on aristocratic and feudal models.⁹⁷ Yet neither its form nor ideology are to be overestimated even if they continued to shape the social landscape of the 17th-century England.⁹⁸ The charter itself proves that its goal was the “the confervation of the peace, and the better government of thofe Parts”, and in that spirit its clauses are to be construed.⁹⁹ Both Sir George and King Charles – being advocates of powerful authority based on personal feudal relations – could assume that a system of land endowments or grants would ensure the population, although the colony at first, and later – development and maintenance of internal order. The mechanism working in such a structure was simple, at least in theory. The Proprietor made large land endowments to wealthy settlers, at least ones who as younger sons of aristocracy were capable of a one-time investment on the other side of the ocean. Then, these landholders would in turn grant parts of their land to those of lesser wealth, and the process would continue further. All the beneficiaries of these endowments, together with their family and servants would populate the colony that – thanks to its quasi-feudal social structure – had the structure of power instantly organized and concentrated in the person of Baron Baltimore. Besides all these, such a system was to ensure the Calverts a continuous profit from the feudal rent.¹⁰⁰

Baltimore’s right to build the manorial system is the more understandable when one is examined it in the context of the function planned for Maryland, namely that of a refuge for the Catholics in the place of the abandoned Avalon.¹⁰¹ It goes without saying that the Calverts were keen on making their coreligionist residents of Maryland. Yet at the time of incorporation of the colony, the number of recusants – primarily due to the administrative and fiscal repressions they suffered under Queen Elizabeth and King James – was no longer high, and they belonged mostly to the higher social strata that were capable of adapting themselves to the current conditions. For that reason, although Catholic nobility definitely desired an improvement of their political, social and religious situation, they were far from

⁹⁶ *Ibidem*, p. 79. The “Tenure in fee simple” allowed free ownership of the property both *inter vivos* and *mortis causa*, while “fee taile” allowed hereditary ownership of the property, yet without the right of its transfer. The remaining is the right to temporary ownership. For a more comprehensive analysis, see: J. Lawler, G. G. Lawler, *op. cit.*, pp. 37, 73 and 82.

⁹⁷ J. D. Krugler, *op. cit.*, p. 126; L. B. Wright, *The Atlantic Frontier, 1607–1763*, Ithaca 1951, p. 65.

⁹⁸ M. J. Rozbicki, *Transformation of the...*, pp. 24nn. Rozbicki is right to note that in this place the provisions of the Charter diverged from the contemporary social and economic reality. This does not contradict the classical statement by Ch. Andrews that the 17th-century British society continued to be mentally feudal and aristocratic, and that what the beneficiaries of royal endowments transferred to America were the models of social and economic order in which they “were born and grew up”: Ch. M. Andrews, *Our Earliest...*, pp. 142–145.

⁹⁹ E. C. Papenfuse, *The Charter of Maryland...*, p. 80.

¹⁰⁰ L. G. Carr, E. C. Papenfuse, *op. cit.*, p. 15; J. D. Krugler, *op. cit.*, p. 126.

¹⁰¹ See above, p. 11 and below pp. 21–22.

being ready to embark on a risky and uncertain project of emigration overseas.¹⁰² The manorial system, on the other hand, was capable of encouraging them to invest in estate on the other side of the ocean, by guaranteeing them an appropriate social status and a prominent place among the colony's authorities. This allowed the hope that the catholic character of the province could be maintained. Even with the view to the – after all, indispensable – inflow of Protestant population. The family, personal, and property ties between the Proprietary Governor and his future catholic vassals, which would thus be reinforced further, were certainly not without significance here. The Royal lawyer examining the document turned his critical attention to this very religious and personal character of the institution of land endowments in the Charter. He believed that the Charter should lead to the population of Maryland, by “persons of all sorts whatsoever different from the other Colonies in Religion Assertion or otherwise”.¹⁰³

It should, however, not be forgotten that following the intentions of the Crown, the privileges of the Proprietor were necessary for him, especially “for the good government, and flate of his Colony”.¹⁰⁴ Notably, it was to allow Calvert to endure the first, and definitely the most difficult, stage of the overseas enterprise. To this end, the Charter of Maryland awarded Baron Baltimore with “free, full, and abfolute power” in the colony.¹⁰⁵ To ensure security of the province that could suspect raids of Native Americans,¹⁰⁶ and assorted “other enemies, pyrates and robbers”, the Charter granted Baron Baltimore with the right to recruit, possess, and train an army and navy that could be used to conduct war both on land and on sea.¹⁰⁷ Besides these, within his province, the Proprietor had the right “to build and fortifie Caftles, Forts, and other places of ftrengh”.¹⁰⁸ Such an extensive empowerment of the Calverts in military matters, that in fact, was subject to no control, must have raised controversies, especially in the neighboring Virginia. Moreover, they were understood as a potential threat to other English colonies in America.¹⁰⁹ However exaggerated these apprehensions seem to be, it is a fact that the Calverts did not flinch to resort to power in defense of their own interest.¹¹⁰ Interestingly, while mak-

¹⁰² W. W. Sweet, *The story of religion in America*, New York 1950, p. 77; H. G. Alexander, *Religion in England 1558–1662*, London 1968, p. 106; M. D. R. Leys, *Catholics in England 1559–1829. A social history*, London 1961, pp. 59–60.

¹⁰³ *Considerations upon the Patent to the Baron Baltimore dat: 20. Junij. Octavo. Car. [1632.]*, AMO, Vol. 3, p. 19.

¹⁰⁴ *The Charter of Maryland...*, p. 62.

¹⁰⁵ *Ibidem*, p. 67.

¹⁰⁶ The original uses the word ‘savages’.

¹⁰⁷ *Ibidem*, p. 73.

¹⁰⁸ *Ibidem*, p. 70.

¹⁰⁹ *Considerations upon the Patent to the Baron Baltimore dat: 20. Junij. Octavo. Car. [1632.]...*, p. 18: “It is inconvenient that the Baron Baltimore should have power to make peace or entertaine warre with any att his [...] pleasure and soe to ingage all the rest of the English Colonies (which as to Strangers cannot bee distinguished the One Colonie from the other) by his [...] owne voluntary Acts which matter is of that Importance as concerns the utter ruine or essentiall safety of the whole English Plantation in all that Country of America”.

¹¹⁰ Concerning the armed conflicts conducted by the Calverts, see e.g.: Ch. M. Andrews, *The Colonial*

ing it possible for this Peer to be protected from an external enemy, Charles I did not forget altogether about the internal dangers, as Baron Baltimore received “in cafe of Rebellion, Tumult, or Sedition, if any fhould happen (which God forbid)” the right to introduce martial law, both in the colony and at the sea.¹¹¹ As it was to become apparent later, this right was of great use for the Calverts, as these were the settlers of Maryland, who turned out to be a far more serious threat to their rule of Maryland than their neighbors, be they white settlers or Native Americans.¹¹²

Consistent with the Charter also the jurisdiction of Proprietor in the colony was absolute and free. Within its territory, Sir Cecil and his descendants could at their discretion nominate and dismiss judges and all the officers “for what cafes foever, and with what power foever, and in fuch forme, as to the faid now Lord *Baltimore*, or his heires, fhall feeme moft conuenient”.¹¹³ Besides this, Baron Baltimore, wielded civil and criminal jurisdiction over the settlers, including the right to sentence to death “if it shall be needfull, and that the quality of the offence require it” and pardon.¹¹⁴ It is worth noting here, that the Charter had clearly reserved the right and obligation of the colonists to conduct and resolve all cases “criminall as civill” and any other whatsoever within the territory of Maryland, and before its courts that dealt judgment in the name of Proprietor.¹¹⁵ This provision was further reinforced by the fact that in line with the privileges of the Durham Palatinate, the Charter did not provide for appealing from the decisions of Maryland courts to the metropolis. This privilege was not only the subject of discussions at its issuance,¹¹⁶ but also later remained the object of complaints of the colony’s residents against its conformity to the “liberties and priviledges off the freeborne Subjects of England”.¹¹⁷

The question of the jurisdiction turns attention to the crucial problems of application of law and its establishment in the colony. For the Charter vested Baron Baltimore with the “free, full, and absolute power [...] for the good and happy government of the faid Province, to ordaine, make, enact, and under his [...] feales to publifh any Lawes whatsoever, appertaining either unto the publike State of the faid Province, or unto the private utility of particular Perfons”.¹¹⁸ This provision, awarding the Calverts with the legislative power in the colony, was nevertheless

Period..., Vol. 2, pp. 274nn.

¹¹¹ *The Charter of Maryland...*, p. 74.

¹¹² See: T. B. Riordan, *The Plundering Time: Maryland in the English Civil War, 1642–1650*, Maryland 1997.

¹¹³ *The Charter of Maryland...*, p. 68.

¹¹⁴ *Ibidem*, pp. 67–68.

¹¹⁵ *Ibidem*, p. 68.

¹¹⁶ *Considerations upon the Patent to the Baron Baltimore dat: 20. Junij. Octavo. Car. [1632.]...*, p. 18: “There is intended to bee granted the Liberties of a County Palantine and there is noe exception [...] of the last appeale to the King as by lawe ought to bee”.

¹¹⁷ *Proceedings of the Council of Maryland, 1667–1675*, AMO, Vol. 5, p. 140.

¹¹⁸ *The Charter of Maryland...*, p. 67.

limited in a fairly significant manner, both in the content of laws and in the form of its establishment. Firstly the Charter clearly stated that the statutory laws in Maryland were to be “confonant to reafon” and, which is most important, “be not repugnant or contrary, but as neere as conueniently may be, agreeable to the Lawes, Statutes, Cuftomes, and Rights of this our Kingdome of *England*”.¹¹⁹ The formula of being ‘consonant to reason’, which also appears in other proprietary charters,¹²⁰ was understood as the fundamental principle of common law limiting every arbitrary power and subjecting it to the abstractly conceived ‘ancient constitution of England’ as the form of higher law, and thus superior to that established by the King or the Parliament.¹²¹ The second proviso, on the other hand, leaves no doubt that, according to the wording of the Charter, Proprietor, should make laws in line with the principles of common and statute law binding in England.¹²² The provisions of the Charter did not envisage any form of control of Baltimore’s acts from the metropolis, as in line with the privileges of the Durham Bishopric, they were exempt from the obligation to obtain royal approval.¹²³ Consequently, the limitations described above were only of no more than formal nature, especially with respect to the fact that before 1660, when King Charles II established the Committee of the Privy Council for colonial matters, no systematic control of colonial legislation had been conducted.¹²⁴

Of far more realistic significance was the provision concerning the procedure of legislation, which stated that the Calverts were to make laws “with the aduife affent and approbation of the Free-men of the faid Province, or the greater part of them, or of their delegates or deputies”.¹²⁵ Being in fact a limitation of Baltimores’ absolute power, this was in line with the English parliamentary tradition, and even though neither King Charles nor the Calverts were ‘partisans’ of this tradition, they could not afford to reject it.¹²⁶ Even though the Charter required that the Proprietor receives only advice and approbation “for the enacting of the faid Lawes”, it actually made the legislative competence of the Calverts depend on the convention of the assembly of residents enjoying the full rights of the colony.¹²⁷ It is true that the Charter of Maryland, envisaged the right of Proprietor to issue sovereign ordinan-

¹¹⁹ *Ibidem*, p. 69.

¹²⁰ *Charter of Avalon...*, p. 36; *Sir Robert Heath’s Patent 5 Charles 1st; October, 30 1629...*

¹²¹ A. Bryk, *The Origins of Constitutional Government. Higher law and the source of judicial review*, Kraków 1999, pp. 171. The concept was formed by Edward Coke early in the 17th c.

¹²² E. B. Russell, *The Review of American Colonial Legislation by the King in Council*, New York 1976, p. 17.

¹²³ P. P. Reinsch, *English Common Law in the Early American Colonies*, New York 1970, p. 40.

¹²⁴ E. B. Russell, *op. cit.*, pp. 16 and 19.

¹²⁵ *The Charter of Maryland...*, p. 67.

¹²⁶ It is found in all the charters of the proprietary type: *Charter of Avalon...*, p. 36; *Sir Robert Heath’s Patent 5 Charles 1st; October, 30 1629...*; *Grant of the Province of Maine: 1639...*; *Charter for the Province of Pennsylvania, 1681...*

¹²⁷ *The Charter of Maryland...*, p. 67. The term *free-men* denotes these settlers who besides personal freedom enjoyed a distinct property status that entitled them to participate in the Assembly, in person or by proxy.

ces, which were a type of minor regulations,¹²⁸ these could only be introduced when it “will be neccessary to apply a remedy, before the Free-holders [...] can be affembled to the making of Lawes”.¹²⁹ These ordinances also had to be in line with the laws of England, and moreover could in no way violate the rights of the province’s residents, their lives, and property.¹³⁰ This last proviso was clearly directed against the Baltimores’ potential attempts to exclude the settlers from participation in law-making that the Charter granted them, by limiting the legislation of the colony to ordinances only.

It would be hard to fail to perceive the significance of the clause on the participation of the colony’s residents in lawmaking. It was capable of encouraging the transfer of the conflict between the King and the Parliament, which at the time was escalating in England, to Maryland. This in fact took place soon after the first settlers arrived at the colony in 1634. In February 1635, Leonard Calvert, Sir Cecil’s younger brother who he appointed the governor, summoned to St. Mary’s the first General Assembly of colonists. The assembly passed a collection of laws on its own, and turned for their approval to Baltimore¹³¹ who refused it, as following the interpretation of the Charter favorable to himself, he believed that it was a competence of the assembly only to approve or reject the drafts of laws, prepared by the Proprietor.¹³² This is why in the *Commission* of 1637, Baltimore, instructed his brother that during the successive general Assembly, planned for January 1638, he made it clear to the settlers that “We doe dissassent unto all the Laws by them heretofore or at any time made within our Said Province, as We doe hereby declare them to be voyd”.¹³³ As an answer to Baltimore’s position, the settlers gathered in St. Mary’s rejected the body of laws presented by the governor, and passed themselves a few scores of bills, in which they regulated the most burning matters of the province. Subsequently, these bills were sent to England for approval of Sir Cecil.¹³⁴ Despite the requests and explanations received from his brother,¹³⁵ Proprietor maintained his position, which brought about an impasse in the lawmaking that was one of the elements of complex conflict between Baltimore and the group of prominent colonists, at whose lead stood the most important of the colony’s ba-

¹²⁸ *Ibidem*, p. 70.

¹²⁹ *Ibidem*.

¹³⁰ *Ibidem*, p. 71.

¹³¹ B. C. Steiner, *Beginnings of Maryland 1631–1639*, “John Hopkins University Studies in Historical and Political Science” 1903, Ser. 21, Nos 8–9–10, p. 55. Even though there are no files preserved from that Assembly, *An Act for the attainder of William Cleyborne* of 1638 quotes to criminal regulations approved by that Assembly that were *de facto* in force in Maryland until 1638: *Proceedings and Acts of the General Assembly January 1637/8–September 1664*, AMO, Vol. 1, p. 23.

¹³² Ch. M. Andrews, *The Colonial Period...*, pp. 300–302.

¹³³ *Commission to Governor Leonard Calvert and Council, 15 April 1637*, AMO, Vol. 3, p. 50.

¹³⁴ *Bacon’s Laws of Maryland*, AMO, Vol. 75, p. 22.

¹³⁵ *Gov. Leonard Calvert to Baron Baltimore, 25 April 1638*, [in:] *The Calvert Papers...*, Vol. 1, pp. 189–190.

rons, Thomas Cornwallis.¹³⁶ Finally, Calvert gave up and approved the Assembly's first bills in 1640,¹³⁷ only to award the Assembly with the right "for the consulting preparing & enacting of wholesome Lawes and Ordinances for the govern^t & well ordering of the said Province & people within the same" two years later.¹³⁸ In this matter, Maryland gained the formal and legal basis to the gradual shaping of representative government.

Another group all the privileges that the Stuart was ready to grant his 'colonial entrepreneur' were ones of trading and fiscal nature. It goes without saying that they were of fundamental importance to the success of the entire undertaking and for Proprietor himself. Thus, so that all the future residents of Maryland "may be the rather encouraged to undertake this expedition, with ready and cheerefull minds", they received the permit to transport and import all the goods they needed from the metropolis to the colony. In line with the provision of the Charter, this license could not be withdrawn or limited, and the only burden imposed on the trade it covered could be the generally binding fees and customs on specific goods.¹³⁹ The clause that entitled the settlers to export all the goods acquired in Maryland to the metropolis, the lands of the British Empire, and also to the friendly foreign states.¹⁴⁰ Moreover, to make the practical execution of the awarded trading licenses possible, the Calverts received the exclusive right to establish ports, and all other maritime trading centers in Maryland, and also to furnish them with appropriate charters.¹⁴¹ Another expression of the palatine sovereignty of the Proprietor was the right to levy and collect "the Cufomes and Subfidies" in all the "Ports, Harbours, and other Creekes and places" of Maryland.¹⁴² This was a result of taking over due prerogatives of the Crown, which – in line with the immunity of the county palatinate – renounced all the rights to levy any "Impofition, Cufome, or other Taxation, Rate, or Contribution" on the residents of Maryland, their property – both estate and chattels, and also on all and any goods loaded and unloaded in the colony.¹⁴³

The collection of privileges granted in the Charter of Maryland, would be incomplete without the religious prerogatives granted to the Proprietor. Although few, they require special examination due to the specific circumstances of foundation and origin of Maryland, as already mentioned.¹⁴⁴ In line with the mentality

¹³⁶ P. P. Reinsch, *op. cit.*, p. 41; L. G. Carr, *The First Expedition to Maryland*, AMO, Vol. 551, p. 18–20; Gov. Leonard Calvert to Baron Baltimore, 25 April 1638..., p. 190.

¹³⁷ *Bacon's Laws of Maryland*..., pp. 24 and 26.

¹³⁸ *Proceedings of the Council of Maryland, 1636–1667*..., p. 110.

¹³⁹ *The Charter of Maryland*..., pp. 72–73.

¹⁴⁰ *Ibidem*, p. 76.

¹⁴¹ *Ibidem*, pp. 76–77. An exception to this rule made by the Crown was the reservation of the right of English subjects to fish in the maritime waters of Maryland, and also to use its shores for drying and salting fish and other necessary fishing-related activities.

¹⁴² *Ibidem*, p. 78.

¹⁴³ *Ibidem*, p. 81.

¹⁴⁴ See above, pp. 11 and 16.

prevalent in those times and colonial rhetoric, one of the main goals in the establishment of colonies was the Christianization of overseas territories and the pagan peoples inhabiting them. This goal was defined in the Charter as the “laudable and pious zeale for the propagation of the Chrifitian Faith”.¹⁴⁵ At the same time, however, which is fully understandable, in none of its clauses did the Charter point at the Catholic character of the Calverts’ enterprise. On the contrary, one of the first privileges it mentioned was awarding the Baltimores the rights of founders and protectors of the Church of England. The Charter granted Sir Cecil and his descendants the “Patronages and Aduowfons of all Churches, which (as Chrifitian Religion fhall encreafe within the Countrey) [...] fhall happen hereafter to bee erected: together with licence and power, to build and found Churches, Chappells, and Oratories [...] and to caufe them to be dedicated, and confecrated according to the Ecclefiastical Lawes of our Kingdome of England”.¹⁴⁶

It would be difficult to deny that the provision of the Charter mentioned above seems to be slightly grotesque in the light of the catholic persuasion of the Calverts being a generally known fact. Yet it becomes fully understandable, if we construe it not as a law, but a duty of the Proprietor.¹⁴⁷ Awarding the Baltimores the right to patronage over the church in Maryland was one of the basic elements of the proprietary Charter.¹⁴⁸ Yet the analogous provisions set in the Charter of Avalon and in Sir Robert Heath’s Charter do not include a clause about executing them in accordance with the laws of the Church of England. The clause in question was added during the editing of the Charter of Maryland and was to be repeated also in the later charters.¹⁴⁹ The reason why this change was made must have been the conversion of Sir George, which justified the need of direct protection of the Church of England in Maryland.¹⁵⁰ An additional argument that proves that the right to erect churches in the colony was in fact a duty of the Proprietor to erect them in accordance with the laws of the Church of England is found in the final clause of the Charter of Maryland, in which Charles I makes a reservation that the interpretation of the Charter may in no way violate “Gods Holy and Truely Chrifitian Religion, or the allegiance due unto Vs, Our Heires and Succeffors”.¹⁵¹ It goes without saying that the notion of ‘the truly Christian religion’ is to be construed as the Anglican religion, and that consecration of a church in the Catholic rite would stand in direct breach of this.¹⁵² At the same time public practi-

¹⁴⁵ *The Charter of Maryland...*, p. 62.

¹⁴⁶ *Ibidem*, pp. 64–65.

¹⁴⁷ G. Petrie, *Church and State in Early Maryland*, “John Hopkins University Studies in Historical and Political Science” 1892, Ser. 9, No. 4, p. 7.

¹⁴⁸ Its is found in all Durham type charters: *Charter of Avalon...*, p. 35; *Sir Robert Heath’s Patent 5 Charles 1st; October, 30 1629...*; *Grant of the Province of Maine: 1639...*; *Charter of Carolina, March 24, 1663...*

¹⁴⁹ *Ibidem*.

¹⁵⁰ J. D. Krugler, *op. cit.*, p. 124.

¹⁵¹ *The Charter of Maryland...*, p. 83.

¹⁵² G. Petrie, *op. cit.*, p. 10.

cing of Catholicism, legally forbidden in England, would in any case be a breach of allegiance to the King.¹⁵³

It may be assumed that, in the light of the interpretation of the Charter's provisions most favorable for the Baltimores, that the Proprietor, should he decide to a public erection of a church in his colony, was made to do this only "according to the Ecclesiasticall Lawes of our Kingdome *of England*". This clearly proves that even though Charles I trusted the Calverts, faced with the strong opposition of the authorities of Virginia¹⁵⁴ and with full awareness of the cooperation of Sir Cecil with the English Jesuits,¹⁵⁵ the King did not fail to provide a formal guarantee to secure his overseas dominion against the potential spread of papism. On the other hand, the Crown in fact did not frustrate the Catholic character of Maryland, whose Proprietor abided by the religion-related provisions of the Charter of Maryland, and did not introduce any public religion in the colony.¹⁵⁶

It was through the religious privileges, that Charles I integrated the sovereignty of Proprietor, awarding him the rights altogether greater than he himself enjoyed in his kingdom. Moreover, the King made sure that the competences of his Lord Palatine should not be reduced. The Charter of Maryland clearly states that should "any doubts or queftions fhould arife, concerning the true fence and underftanding of any word, claufe, or fente(n)ce contained in this Our prefent Charter, Wee will ordaine, and command, that at all times, and in all things, fuch Interpretation bee made thereof [...] as fhall be judged moft aduantageous, and favourable unto the the faid now Lord *Baltemore*, his heires and affignes".¹⁵⁷ Even though this clause was limited by the already mentioned proviso of the unassailability of the Anglican faith and fealty to the monarch, it would be hard not to agree with the royal lawyer who thus recapitulated his objections concerning the Charter issued by the King "Royall and Imperiall Power which is granted in all things of Sovraignty saving only Allegiance to the Kings Majestie, to the Baron Baltimore to bee granted to any Person in ffee Simple in Places soe remote [...] may prove very dangerous [...] the Baron Baltimore's Colonie haveinge power in themselves to manage their Affaires free from all dependancy on others".¹⁵⁸

¹⁵³ J. D. Krugler, *op. cit.*, p. 125. See also above, footnote 102.

¹⁵⁴ See: *Documents relating to the Settlement of Maryland, 1629–1637...*

¹⁵⁵ L. G. Carr, *op. cit.*, p. 12; J. T. Ellis, *American Catholicism*, Chicago 1962, p. 24.

¹⁵⁶ J. D. Krugler, *op. cit.*, p. 124: The issue of the Calverts' religious policy in Maryland goes beyond the subject scope of this paper.

¹⁵⁷ *Charter of Maryland...*, pp. 82–83.

¹⁵⁸ *Considerations upon the Patent to the Baron Baltimore dat: 20. Junij. Octavo. Car. [1632.]...*, p. 19.